

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IGNITE SPIRITS, INC.,

Case No. 2:21-CV-1590 JCM (EJY)

Plaintiff(s),

ORDER

V.

CONSULTING BY AR, LLC,

Defendant(s).

Presently before the court is Magistrate Judge Elayna Youchah's report and recommendation ("R&R") to grant counterclaim defendant Ignite International, LTD.'s ("Ignite International") motion to dismiss. (ECF No. 48). Counterclaimant (and original defendant) Consulting by AR LLC's ("Consulting") objected to the R&R (ECF No. 51). Counterclaim defendant Ignite International filed a response. (ECF No. 54).

I. Background

This case originated in the Eighth Judicial District Court for the District of Nevada as a contract dispute between Ignite Spirits, Inc. (“Ignite Spirits”) and Consulting by AR (“Consulting”) in which Ignite Spirits sued for declaratory relief. (ECF No. 1- 2). Ignite Spirits contends that Consulting breached a contract—or what the parties call a “letter agreement”—entered into by Ignite Spirits and Consulting and sues for declaratory relief that the letter agreement is no longer valid and enforceable. *Id.*

Consulting timely removed the case and, along with its answer, filed counterclaims against Ignite Spirits, the original plaintiff, and non-parties Ignite International and Ignite International Brands, Ltd. (“Ignite International Brands”). The court exercises diversity

1 jurisdiction over this case pursuant to 28 U.S.C. § 1332 since the parties are sufficiently diverse
 2 and the amount in controversy exceeds the jurisdictional threshold of \$75,000.

3 Under the letter agreement, Consulting was to assist in brokering a “strategic marketing
 4 and promotional partnership” for Ignite Spirits with Resorts World, a multi-billion-dollar
 5 resort located on the Las Vegas Strip. (ECF No. 17 at 11). After the letter agreement was
 6 signed, Consulting brokered an agreement between Resorts World and Ignite International.¹

7 Consulting essentially argues that it fulfilled its obligations to broker a deal between
 8 the Ignite companies and Resorts World, but never received any of the compensation promised
 9 in the letter agreement, which included, *inter alia*, stock, and stock options of Ignite
 10 International Brands, the parent company of the Ignite companies. (*Id.*). Ignite Spirits argues
 11 that Consulting failed to substantially perform as required by the letter agreement in that it
 12 failed to obtain a definitive agreement between Ignite and Resorts World. (ECF No. 1-2 at 4,
 13 ¶ 13).

14 After Consulting demanded payment for its performance under the letter agreement,
 15 Ignite Spirits sent a letter to Consulting’s counsel offering binding arbitration with no appellate
 16 rights. (*Id.* at 28). Consulting rejected this offer. (*Id.*). Ignite Spirits subsequently brought
 17 an anticipatory declaratory judgment action against Consulting, seeking a judicial
 18 determination that (1) Consulting breached the letter agreement, (2) Ignite Spirits has no
 19 further obligations under the letter agreement, and (3) the letter agreement is no longer valid
 20 or enforceable. (ECF No. 1-2 at 5).

21 Consulting removed the case and filed counterclaims alleging breach of the letter
 22 agreement, breach of the covenant of good faith and fair dealing, equitable estoppel,
 23 promissory estoppel against Ignite Spirits and Ignite International Brands, and unjust
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25
 26 ¹ Notably, Ignite International was not a signatory to the original letter agreement
 27 between Ignite Spirits and Consulting. Consulting argues that John Schaefer, who signed the
 28 letter agreement as “President,” is president of Ignite Spirits and Ignite International, which
 renders Ignite International a party to the letter agreement. ECF No. 17 ¶¶ 6, 28. What is
 clear, however, is that Ignite International is not mentioned anywhere in the letter agreement
 or its attachments. (*See* ECF No. 1-6).

1 enrichment against all three Ignite companies (Ignite Spirits, Ignite International Brands, and
 2 Ignite International) (collectively the “Ignite companies”). (ECF No. 17 at 30–33).

3 Ignite International now moves this court to dismiss it from the action for lack of
 4 personal and subject matter jurisdiction, improper venue, and failure to state a claim. Fed. R.
 5 Civ. P. 12(b)(1),(2),(3), and (6).

6 The magistrate judge issued a report and recommendation granting Ignite
 7 International’s motion to dismiss the counterclaim against it.² (ECF No. 48). Consulting
 8 objected to the report and recommendation (ECF No. 51) and Ignite International responded
 9 (ECF No. 54).

10 **II. Legal Standard**

11 A party may file specific written objections to the reports and recommendations of a
 12 United States magistrate judge made pursuant to 28 U.S.C. § 636(b)(1)(B). Where a party
 13 timely objects to a magistrate judge’s report and recommendation, the court is required to
 14 “make a *de novo* determination of those portions of the report or specified proposed findings
 15 or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The court “may
 16 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
 17 magistrate.” *Id.*

18 **III. Discussion**

19 The magistrate judge dismissed Ignite International from this lawsuit based on
 20 improper joinder under the federal rules. The court addresses whether the magistrate judge
 21 properly applied the federal rules of joinder.

22 ...

23 ...

24 ...

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28 ² Only count five of the counterclaim—unjust enrichment—is asserted against Ignite
 International. (ECF No. 17 at 7:2–7).

1 A. The magistrate judge correctly found that the court is not required to look beyond
 2 the four corners of the original complaint when considering appropriate joinder
 3 under Rule 19

4 Rule 19(a)(1) provides that a party is “necessary” in two circumstances: (1) when, in
 5 that party’s absence, “the court cannot accord complete relief among existing parties”; or (2)
 6 when the absent party claims a legally protected interest in the action.

7 Before reviewing the magistrate judge’s Rule 19 analysis, the court must first determine
 8 if the court considers relief from counterclaims in its analysis of whether “complete relief” can
 9 be granted in the absence of a party.

10 Ignite International was not an original party to this action; it was later named as a
 11 counter defendant when Consulting filed its counterclaims. Federal Rule of Civil Procedure
 12 13(h) governs counterclaims and crossclaims and the joining of additional parties as necessary.
 13 Specifically, Rule 13(h) states, “Rules 19 and 20 govern the addition of a person as party to a
 14 counterclaim or crossclaim.”

15 Consulting argues that the court “must” read Rule 13 in light of the Advisory
 16 Committee Note to the 1966 Amendment,³ indicating that parties joined to an action under
 17 Rule 13(h) should be “treated as a ‘plaintiff’ for purposes of the [“complete relief”] Rule 19
 18 analysis.”⁴ (ECF No. 51 at 7).

19 Such a reading would require the court to look beyond the four corners of the original
 20 complaint, which the magistrate judge declined to do . The court agrees.

21 As far as the court can tell, the Ninth Circuit has not directly addressed this procedural
 22 issue. In her recommendation, the magistrate judge relied on a *concurrence* from a Ninth

24 ³ The court notes that the Advisory Committee Notes on the federal rules are not binding
 25 on this court. Courts are required only to give “weight” to such notes. *Mississippi Pub. Corp. v. Murphee*, 326 U.S. 438, 444 (1946) (holding that to ascertain the meaning of the Federal Rules, the construction given to them by the Committee is “of weight”).

27 ⁴ The Advisory Committee Note, in relevant part, reads: “...for the purpose of determining
 28 who must or may be joined as additional parties to a counterclaim or cross-claim, the **party**
 pleading the claim is to be regarded as a plaintiff and the additional parties as plaintiffs or
 defendants as the case may be, and amended Rules 19 and 20 are to be applied in the usual fashion.”
 Fed. R. Civ. P. 13(h) advisory committee note to 1966 amendment (emphasis added).

1 Circuit opinion, which stated that “[t]he completeness of relief [under Rule 19] must be
 2 analyzed within...the four corners of the complaint.” *Confederated Tribes of Chehalis Indian*
 3 *Reservation v. Lujan*, 928 F.2d 1496, 1501 (9th Cir. 1991) (O’Scannlain, J., concurring in part
 4 and dissenting in part) (internal quotations omitted).

5 Footnote 3 in the *Lujan* concurrence further states: “[I]t must be noted that complete
 6 relief refers to relief *as between the persons already parties*, and not as between a party and
 7 the absent person whose joinder is sought.” *Id.* at 1501 n.3 (quoting 3A J. Moore & J. Lucas,
 8 Moore’s Federal Practice ¶ 19.07–1 [1], at 19–93 to 98 (2d ed. 1990) quoted in *Eldredge v.*
 9 *Carpenters 46 N. Cal. Counties Joint Apprenticeship & Training Comm.*, 662 F.2d 534, 537
 10 (9th Cir. 1981), *cert. denied*, 459 U.S. 917 (1982)) (emphasis added).

11 In contrast, Consulting offers a string cite of persuasive—but non-controlling—
 12 authority for its position that complete relief must necessarily include relief sought by a
 13 counterclaimant. (ECF No. 51 at 8 n.4). Furthermore, Consulting objects to the magistrate
 14 judge’s reliance on *Lujan* because it argues the cases are distinguishable. (*Id.*).

15 Admittedly, there are factual differences between *Lujan* and the instant case. For one,
 16 the plaintiffs in *Lujan* had their case dismissed for *failure* to join a required party. *Lujan*, 928
 17 F.2d at 1500. Here, Consulting attempts to *add* a “required” party (Ignite International).

18 Regardless of any factual distinctions, the court is persuaded by the reasonable
 19 proposition that a court analyzes “complete relief” for compulsory joinder under Rule 19 as
 20 pertaining to the *parties already properly before the court*, not to hypothetical parties that may
 21 or may not be properly joined.

22 Indeed, this is a more plausible reading of the plain text of Rule 19(a)(1)(A), which
 23 states that a court considers whether it “can[] accord complete relief **among existing parties**”
 24 if an absent party is not joined. As set forth previously, Ignite International was not an original
 25 party to this action. Thus, a court must consider the present prayer for relief “among existing
 26 parties” before compelling a new party to be joined. In other words, the cart must come before
 27 the horse.
 28

1 Therefore, the court holds that the magistrate judge did not err in confining joinder
 2 analysis to the four corners of the original complaint, and not the counterclaims.

3 B. Ignite International is not a required party under Rule 19 because the existing
 4 parties can obtain complete relief absent its joinder, and Consulting would not be
 5 exposed to multiple or inconsistent obligations if Ignite International is not joined.

6 Having determined that a Rule 19 analysis should be applied to the relief sought in the
 7 original complaint—not the relief sought in the counterclaim—the court now examines
 8 whether the magistrate judge properly denied compulsory joinder of Ignite International under
 9 Rule 19.

10 In the context of Rule 19, “complete relief” means that existing parties can get
 11 “meaningful recovery for their claims without multiple lawsuits on the same cause of action.”
 12 *SPECS Surface Nano Analysis GmbH v. Kose*, Case No. C 11-00393 JM, 2011 WL 2493722,
 13 *2 (N.D. Cal. June 23, 2011) (citing *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d
 14 1030, 1043 (9th Cir.1983)). The relief sought in Ignite Spirits’ original complaint is
 15 declaratory relief that the letter agreement is invalid and unenforceable. (ECF No. 18-2 at 4).
 16 Ignite International was not a signatory to that agreement. Consequently, the court could
 17 accord complete relief on the letter agreement without Ignite International as party to the case.

18 Next is the question of whether an existing party would be “subject to a substantial risk
 19 of incurring double, multiple, or otherwise inconsistent obligations because of the interest” of
 20 the absent party. Fed. R. Civ. P. 19(a)(1)(B)(ii). While Consulting, as an existing party, may
 21 be required to file a separate suit if Ignite International is dismissed, the court does not find
 22 that this would violate Rule 19(a)(1)(B)(ii). Furthermore, the court does not see how dismissal
 23 of Ignite International would incur multiple or otherwise inconsistent obligations for Ignite
 24 Spirits, the other existing party.⁵

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 27 ⁵ The court notes that the magistrate judge, and the parties, erroneously analyzed Rule
 28 19(a)(1)(B)(ii) as incurring multiple or otherwise inconsistent obligations on Ignite International,
 the absent party, as opposed to the “existing part[ies]” (Consulting or Ignite Spirits), as the Rule
 states. (“A person must be joined as a party if...that person claims an interest relating to the subject
 of the action and is so situated that disposing of the action in the person’s absence may...leave an

1 For instance, if Ignite Spirits prevails, the dispute ends; if Consulting prevails, Ignite
 2 Spirits, and possibly Ignite International Brands, are bound to their obligations in the letter
 3 agreement. But these obligations are separate and apart from the potential unjust enrichment
 4 liability with Ignite International, a distinct subsidiary who was not a signatory to the letter
 5 agreement—even if it was (allegedly) tangentially involved in the transaction or occurrence of
 6 the disputed events.

7 Consulting’s claims against Ignite International are based on *quasi-contract* theories of
 8 unjust enrichment *in the alternative* to claims raised against Ignite Spirits and Ignite
 9 International Brands. Put another way, the instant case is a *contract* dispute and unjust
 10 enrichment claims arise in the *absence* of a contract. The magistrate judge properly found that
 11 whether the letter agreement is deemed an enforceable contract or not, if Ignite International
 12 is joined as a party, it “will stand alone in the unjust enrichment/quantum meruit cause of
 13 action....” (ECF No. 48 at 7). This critically undercuts the argument that Ignite International
 14 is a required and necessary party to accord complete relief or avoid unnecessary additional
 15 obligations.

16 C. The magistrate judge properly exercised discretion in not joining Ignite
 17 International under permissive joinder pursuant to Rule 20(a).

18 Lastly, the court reviews whether Ignite International should be joined under
 19 permissive joinder pursuant to Rule 20(a). This rule states that joinder of defendants in an
 20 action is appropriate when (A) “any right to relief is asserted against them jointly, severally,
 21 or in the alternative with respect to or arising out of the same transaction, occurrence, or series
 22 of transactions or occurrences; and (B) any question of law or fact common to all defendants
 23 will arise in the action.”

24 However, even where the requirements of permissive joinder are met, the court must
 25 examine whether joinder comports “with the principles of ‘fundamental fairness’ or would

27 **existing party** subject to a substantial risk of incurring double, multiple, or otherwise inconsistent
 28 obligations because of the interest.”)

Under either interpretation, the result is the same, however.

1 result in prejudice to either side.” *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir.
 2 2000) (internal citation omitted).

3 Consulting argues that there is “no question” and that it is “not a close call” that its
 4 unjust enrichment claims against Ignite International Brands, Ignite Spirits, and Ignite
 5 International arise from the same transactions and occurrences as its breach of contract claims.
 6 (ECF No. 51 at 13). Consulting further contends that Ignite International should be joined as
 7 a party to this litigation in the interests of judicial efficiency since the action against it require
 8 analysis of the same facts and even some of the same key witnesses. (*Id.*).

9 The magistrate found that “[w]hile there may be some factual overlap between the
 10 validity and enforceability of the letter agreement and whether any of the Ignite family entities
 11 were unjustly enriched, the laws pertaining to these claims are not “in common.” (ECF No.
 12 48 at 7). The court agrees.

13 Unjust enrichment is an equitable rather than a legal claim, and thus requires separate,
 14 unique analysis. *McKesson HBOC, Inc. v. New York State Common Retirement Fund, Inc.*,
 15 339 F.3d 1087, 1091 (9th Cir. 2003) (“Unjust enrichment is an equitable rather than a legal
 16 claim; consequently, no action for unjust enrichment lies where a contract governs the parties'
 17 relationship to each other.”).

18 While the court agrees that this is a close call, even assuming the Rule 20(a) elements
 19 of permissive joinder are met here, the court must still whether joinder comports “with the
 20 principles of ‘fundamental fairness’ or results in prejudice to either side.” *Coleman v. Quaker*
Oats Co., 232 F.3d 1271, 1296 (9th Cir. 2000) (internal citation omitted). The court finds that
 21 prejudice to Ignite International in being required to be joined to this action outweighs any
 22 prejudice to Consulting in having to pursue additional litigation.

23 As stated previously, Ignite International is indirectly implicated in a single
 24 counterclaim in this entire action since it was not a signatory to the letter agreement and its
 25 alleged benefit from Consulting’s actions were obtained only through the potential role of the
 26 parent company Ignite International Brands. In essence, the lack of precision in the various
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1 agreements is of the parties' own making, but it is not clear to the court that Ignite International
2 should be joined.

3 Again—and most critically—if the contract is rendered enforceable, Ignite
4 International would remain as a lone counter defendant on an alternative liability theory of
5 unjust enrichment. The court finds this potential outcome too attenuated from the primary
6 action to justify requiring Ignite International to engage in complex commercial litigation that
7 addresses many other claims and issues.

8 The court is sensitive to the instruction from the Supreme Court that “[u]nder the
9 [Federal] Rules, the impulse is toward entertaining the broadest possible scope of action
10 consistent with fairness to the parties”...thus, “joinder of claims, parties and remedies is
11 strongly encouraged.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966).

12 However, the court exercises its discretion that the broadest possible scope of action
13 consistent with fairness to the parties does not involve Ignite International as a party.

14 **IV. Conclusion**

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Magistrate Judge
17 Youchah's recommendation (ECF No. 48) be, and the same hereby is, ADOPTED.

18 IT IS FURTHER ORDERED that counter defendant Ignite International, LTD. be
19 DISMISSED from this action.

20 DATED August 15, 2022.

21 
22 James C. Mahan
23 UNITED STATES DISTRICT JUDGE